IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.707 OF 2005
IN
COMPANY PETITION NO.148 OF 1989

Mayadevi Radheshyam Agarwal Applicant

versus

The Official Liquidator and
Liquidator of M/s.Jairamdas
Udyog Ltd. (In Liqn.) Respondent

Mr.Cyrus Ardeshir i/by J.P.Kar for applicant.

Ms.K.V.Gautam - Dy.O.L..

CORAM : S.C.DHARMADHIKARI, J.

DATE : 22nd June 2006

PC :

1. This is an application invoking the Court's jurisdiction under section 446(1) of the Companies Act, 1956.

2. The applicant seeks leave to file a suit in the City Civil Court at Bangalore for annulling the conveyance purportedly executed by the Respondent for transferring leasehold right in respect of land admeasuring 21 acres 2 Guntas

including building thereon situated at 8th Mile, Mysore Road, R.V.Niketan, Bangalore as being violative of the terms of the lease dated 2nd March, 1962. This property is leased to M/s.Jairmadas Udyog Ltd. (company in liquidation) pursuant to the lease deed dated 2nd March, 1962 effective from 1st March, 1961. The applicant in paragraph 2 of the affidavit in support of this application has contended that Agarwal Family are owners of these lands which are agricultural lands. It was given to the company in liquidation on lease of 50 years at the moderate rent of Rs.1,500/- commencing from 1st March 1961 pursuant to an Indenture of Lease duly registered.

3. The lease expires on 28th November 2011. There is a specific embargo according to the applicant in clause-13 of the lease deed inasmuch as no transfer can be effected without obtaining written consent of the lessors, which may not be withheld but which in this case has not been obtained.

4. The Official Liquidator advertised the sale of this plot and issuing a sale notice proceeded to accept some offers. The parties did not point

out, either to the Official Liquidator or to this Court, the aforesaid negative covenant, according to the applicant herein.

5. There is a conveyance/lease deed, now executed pursuant to an order passed by this Court, and therefore, it is necessary for protecting the right, title and interest of the applicant that a substantive suit on title is filed against the company in liquidation as against the purchaser.

6. The Official Liquidator has filed an affidavit objecting to the grant of leave and submitted that the sale has been conducted under the supervision of this court and relying upon right of the company in liquidation, the property has been sold on "as is where is" basis. All the procedural requirements are complied with and the sale is complete.

7. In my view, the mandate of Section 446(1) of the Companies Act is that leave of the Court i.e. Company Court would be necessary after a winding up order is made or Official Liquidator is appointed as Provisional Liquidator. Any suit or other legal proceedings cannot be commenced or if

pending on the date of winding cannot be proceeded with except by leave of the Company Court.

8. In my view, it is not necessary to go into the disputes which have been raised. It is not for me to decide as to whether the applicant while instituting the suit can assail the sale or the right of liquidator or the company in liquidation, at this stage. It is for the Civil Court to go into these aspects as and when suit is filed and needless to state that it would be open for all parties to raise such contentions as are permissible in law on merits of the controversy. Merely because in the opinion of the Official Liquidator the lease was subsisting and that the company in liquidation had right, title or interest in the property leave should not be granted, that opinion cannot prevent the Company Court from exercising its discretion under section 446(1). At the same time, this Court is protecting the legal rights as also contentions of the Official Liquidator and purchaser. Hence, the leave can be granted, which is accordingly granted, and the company application is made absolute in terms of prayer clause (a).

(S.C.DHARMADHIKARI, J.)